IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 25974 of 2007(P)

PETITIONER:

PANJOS BUILDERS PVT. LTD.,
PANJOS GARDENS, PADIVATTOM, EDAPPALLY P.O.
COCHIN-682 024. REPRESENTED BY ITS MANAGING
DIRECTOR JOSE MANI.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.C.N.SREEKUMAR

RESPONDENTS:

1. THE DEPUTY CHIEF ENGINEER,
ELECTRICAL CIRCLE, ERNAKULAM.

2. THE ASSISTANT EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD, ELECTRICAL
MAJOR SECTION, PALARIVATTOM.

3. THE ASSISTANT ENGINEER,
ELECTRICAL SECTION, PALARIVATTOM.

BY ADV. SRI.P.P.THAJUDEEN, SC, K.S.E.B

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).No.25974 of 2007 P

Dated this the 18th day of September, 2007.

JUDGMENT

Aggrieved by Ext.P2 bill, which demands charges for unauthorized extension, as alleged by the respondent-Board, the petitioner preferred Ext.P3 objections before the Assessing Officer. Ext.P4 detailed order came to be passed by the Assessing Officer in terms of Section 126(6) of the Electricity Act, 2003. The petitioner preferred an appeal as Ext.P5 under Section 127 of the Electricity Act.

2. Section 127(2) of the Electricity Act, 2003 provided that no appeal against an order of assessment shall be entertained unless an amount equal to 1/3rd of the demand is deposited in cash or by way of bank draft. Documentary evidence should be enclosed along with the appeal. The said provision, among others, came to be amended as per Electricity Act of 2007, with effect from 15.6.2007. The words 'one third of the assessed amount' have been substituted as 'half of the assessed amount'.

Certain amendments have been made to Section 126 of the Act as well.

3. According to the petitioner, apart from the issue regarding unauthorized extension, there is also a challenge against the tariff LT 8, which has been made applicable to him, in determining the charges for unauthorized extension vide Ext.P2, as affirmed in Ext.P4. Therefore, the petitioner proceeded to determine, on his own, the amount of disputed charges and then proceeded to remit an amount of Rs.2,53,300/-, stated to be half the amount in dispute, for the purpose of maintaining Ext.P5 appeal. I do not think it is open to the consumer to determine, on his own, half the amount that is payable for maintaining an appeal under Section 127 of the Act. If the appeal is against the whole of the demand, then what is to be deposited is half the same. If the appeal is against a portion of the demand, then the deposit required under Section 127 is half the disputed amount. It cannot, therefore, be said that the respondents have acted illegally in requiring the

petitioner to deposit such an amount, as is required, for maintaining the appeal as such.

4. But, there is one fact which might come before the appellate authority while considering Ext.P5 appeal. Apparently, the assessment of electricity charges even for the purpose of Section 126 of the Act has been made in Exts.P2 and P4 by applying the amended provisions, for a period of three months prior to Ext.P2, which is dated 18.6.2007. The amended provisions came into effect on 15.6.2007.

5. I do not propose to indicate one way or the other the impact, the date of amendment would have, on Ext.P2, as that is a matter to be considered by the appellate authority, which is in seisin of Ext.P5 appeal. But the amended provisions contemplate deposit of half the amount compared to 1/3rd of the amount which was contemplated by Section 127(1) of the Act prior to the amendment of 2007. The amendment brought about to Section 126 of the Act, which substitute

the words "two times' for '1½ times' in Section 126(6) would also have an impact.

6. I heard Sri.V.M.Kurien and standing counsel for the Electricity Board as well.

7. In the facts and circumstances of the case, I direct that Ext.P5 appeal be considered and disposed of by the first respondent under Section 127 of Act of 2003 on merits, provided, the petitioner deposits another amount of Rs.2,50,000/- within two weeks from the date of receipt of a copy of this judgment. If such amount is deposited, the first respondent shall treat the total remittance made by the petitioner as sufficient compliance with the direction for pre-deposit and then proceed to entertain and dispose of Ext.P5 appeal on merits.

Writ petition is disposed of as above.

Sd/-

(V.GIRI)

JUDGE

sk/

//true copy//

P.S. To Judge